*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.12314 of 2007

% 6-12-2007

K.Satyanarayana .. Petitioner

And

$ The Cantonment Board,
Represented by its Chief Executive
Officer & Member Secretary .. Respondent

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri V.Hari Haran

^ Counsel for respondents : Sri Deepak Bhattacharjee

? CASES REFERRED :

NIL

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12314 of 2007

Date : 6-12-2007

Between :

K.Satyanarayana .. Petitioner

And

The Cantonment Board,
Represented by its Chief Executive Officer & Member Secretary .. Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12314 of 2007

ORDER:

1. Heard Sri Hari Haran, the learned Counsel representing the writ petitioner and Sri Deepak Bhattacharjee, the learned Counsel representing the respondent/Cantonment Board.

2. Sri Hari Haran, the learned Counsel, had taken this Court through the contents of the affidavit filed in support of the Writ Petition and also the stand taken in the counter affidavit. The learned Counsel also would submit that at a particular point of time, approval had been granted and objection had not been taken. But for certain reasons, the petitioner was unable to proceed with the construction and again when an application has been made praying for the building permission, the present

objection had been taken. The learned Counsel also would submit that as far as the other similar plots are concerned, in most of the plots constructions came up since permissions had been granted and the writ petitioner is being discriminated. The Counsel also would maintain that at any rate the objection taken relating to the effective alternative remedy cannot a sustainable objection.

3. Per contra, Sri Deepak Bhattacharjee had taken this Court through the impugned order and the reasons mentioned and would submit that the same is based on a resolution and hence the objection taken is a tenable objection. The learned Counsel also pointed out to Sections 122, 250 and 340 of the Cantonment Act 2006, in short referred to as “Act” for the purpose of convenience.

4. Heard the Counsel and perused the contents of the affidavit filed in support of the Writ Petition and also the averments made in the counter affidavit as well.

5. The writ petitioner Koppu Satyanarayana, filed the present Writ Petition for a Writ of Mandamus declaring the proceedings No.EB/PNo.21/Akula Narayana Cly/Pkt/55/580, dated 20-2-2007 as illegal, untenable, illogical, irrational and consequently to set aside the same by directing the respondent to grant building permission to

the petitioner in his application dated 20-1-2007 without insisting on the condition in the impugned order and to pass such other suitable orders.

The said impugned order dated 20-2-2007 reads as hereunder :

Tel.No.27805797 Office of the Cantonment Board

Court Compound, S.P. Road,
Secunderabad-500003 (A.P.)

Lr.No.EB/PNo.21/Akula Narayana Cly/Pkt/55/580
dated 20th February 2007

To
Shri K.Satyanarayana,
R/o.House No.10-1-610/A,
Nehru Nagar, West Marredpally,
Secunderabad-500026.

Sub: Submission of Plans for proposed construction of residential building on Plot No.21 in Sy.No.13 & 14 situated at Akula Narayana Colony, Laxminagar, Picket, Secunderabad Cantonment.

Ref: Your application received in this office on 20-01-2007.

In this connection this is to inform you, that, your above referred application cannot be considered as the Society has not handed over 40% common areas through Gift Deed as per layout byelaws.

You are therefore advised to insist the Society for handing over the 40% open areas to Cantonment for processing your building application.

However, the Board has further unanimously resolved vide its Resolution No.7 dated 28-10-2006 that the entire issue of ungifted layout may be

referred to competent authority for obtaining necessary directions.

One copy of the plan is being retained in our office for our records.

Sd/-
Chief Executive Officer & Member Secretary
(Valeti Premchand, IDES)

It is also further averred that the petitioner is the absolute owner of the property bearing Plot No.21, forming part of Sy.Nos.13 and 14 of Laxminagar, Picket, Secunderabad Cantonment having purchased the same from its anterior owner Sri Mekala Gnaneshwar s/o.Sri M.Venkaiah under a registered sale deed bearing Doc.No.1022/2004, dated 7-5-2004 for valuable consideration. It is to be pointed out that the anterior vendor Sri Mekala Gnaneshwar purchased the said plot of land under a sale deed dated 30-1-1981, registered as Doc.No.1059/1997 dated 24-7-1997 from its anterior owner Sri A.N. Yadagiri s/o. late Sri Akula Narayana for valuable consideration. Further it is averred that the anterior vendor had obtained necessary permission under the ULC Act from the Military Estates Officer (ULC), Secunderabad vide proceedings No.ULC/SBD/GLR/SY.NO.444(P2)/SEC 26/883/81, dated 5-7-1982. It is also pointed out that the Cantonment Board then through its Executive Officer, Secunderabad Cantonment vide its proceedings No.5(24), dated 31-1-

1973 and sanctioned on 1-3-1973 had sanctioned layout of the temple of the entire plot of land covered by Sy.Nos.13 and 14 of Marredpally Village. Pursuant to the layout, various plots had been sold to the persons who had been sanctioned permission for construction of more than two decades now. Subsequent to the petitioner's purchase as aforesaid, the petitioner applied for sanction for construction of a building by application dated 3-5-2006. The same was sanctioned by the respondent vide proceedings No.EB/TD&DC/449 dated 21-7-2006 in File No.2(8) dated 28-6-2006 where under the necessary fee was collected and he was permitted to make construction as per the sanction. The said order dated 21-7-2006, reads as hereunder :

Tel.No.27805797 Office of the Cantonment Board,
Sardar Patel Road, Court Compound,
Secunderabad-500003(A.P.)

Lr.No.EB/PNo.21/Akula Narayana CHS/449 Dt.21-July-2006

To
Shri K.Satyanarayana,
R/o.House No.10-1-610/A,
Nehru Nagar, West Marredpally,
Secunderbaad-500026.

Sub: Sanction of building plan (Ground Floor) – Plot No.21, Sy.No.13 & 14, Akula Narayana CHS, Picket, Secunderabad Cantonment U/S 181 of the

Cantonment Act 1924.

Dear Sir,

Reference Your Notice dated 3-5-2006 received U/S 179 of Cantonment Act 1924.

Sanction is hereby communicated to you for construction of building as per plan enclosed at the subject premises with following conditions:

(i) The sanction of the erection or re-erection of the building given by the Cantonment Board shall be available for one year from the date from which it is given. If the construction of the building so sanctioned is not commenced within the said period, it shall not thereafter commence unless fresh sanction is accorded by the Board.

(ii) You are permitted a period of 12 (twelve months) to complete the construction from the date of commencement.

(iii) You are required to inform this Office after the Building upto plinth level is constructed. You will proceed further with construction only after getting the plinth-checking certificate from the Office.

(iv) You are required to report the date of completion in writing to the Board/Executive Officer within 30 (thirty days) after the completion of erection or re-erection of the Building.

(v) During construction, the floor space should not be exceeded than sanctioned in the plant.

(vi) The marginal open space to be building should be maintained as per the sanctioned plan.

(vii) The height of the proposed construction should not exceed the height of the building shown in the sanctioned plan.

(viii) You have been sanctioned building comprising of GROUND FLOOR only. No additional floors shall be constructed other than the floors as shown in the sanctioned plan.

(ix) The internal dimensions of all the rooms, thickness of walls and external dimensions of building shall not be deviated from the sanctioned plan.

(x) The position and dimensions of all windows, doors, ventilators, balconies and openings for each room of the building shall be provided according to the sanctioned plan.

(xi) No Cellars, Vault or under ground rooms shall be constructed without prior permission from the Cantonment Board.

(xii) No additional balconies shall be constructed other than shown in the sanctioned plan. The projection of every balcony should not exceed 1 Mtr. From the building.

(xiii) The plans should be adhered to absolutely in every respect with the actual construction at site.

(xiv) This sanction is a Municipal sanction only and is without prejudice to any one else's rights on or to the land.

(xv) In case of any deviation/change of plan is required, you are required to submit a revised plan. Further construction should be done only after getting the revised plan approved.

(xvi) In case of any violation of condition/conditions mentioned above, this Office has the right to withdraw the sanction.

AUTHORITY: CBR No.2(8)
Dated 28.06.2006 Sd/-

However, due to some transfer and other issues, the petitioner could not undertake the construction. Further, on advise, the petitioner filed a revised application dated 20-1-2007 requesting for change of the proposed construction. The said application was returned holding that it cannot be considered as the Society had not handed over 40% of the common areas through Gift Deed as per layout byelaws vide proc.No.EB/PNo.21/Akula Narayana Cly/Pkt/5/580 dated 20-2-2007. Further it is averred that the grounds on which the petitioner's application for permission was rejected is wholly untenable and unsustainable. It is pertinent to note that the layout had been sanctioned way back in the year 1973 and all the open areas and layouts, as per the procedure then in vogue had been vested in the Cantonment Board and had been treated and used as belonging to the Cantonment Board only. The Cantonment Board itself had recognized the same, sanctioned the building permission not only to the neighbouring plot owners, who on the strength of the same had constructed and residing therein for several decades, but the petitioner himself was sanctioned earlier

a building permission on the strength of such anterior documents and layout permission vide Proc.No.EB/TD&DC/449, dated 21-7-2006 referred supra. The present application made by the petitioner is only for modification/reconstruction of the sanction already given and therefore imposition of condition now to insist on the society to hand over 40% of the common areas under a Gift Deed to the respondent is unwarranted and illegal. It is further stated that the attempt if any of the respondent should have been on the person who obtained the layout and the attempt to seek handing over the common areas by the society at this point of time cannot be sustained. The present society functioning there is only a welfare society and cannot be deemed or authorised to transfer or alienate or vest any property in the Cantonment Board. The stand of the respondent is unilateral and illogical and cannot be sustained. In such circumstances, the writ petitioner approached this Court praying for the appropriate reliefs.

6. It is pertinent to note that this fresh condition which had been referred in the impugned order dated 20-2-2007 had not been referred to in the prior order dated 21-7-2006 which had been already referred to supra. The contents of both the orders which had been specified above being self-explanatory, the same need not be

further elaborated.

7. In the counter affidavit filed by the respondents, several of the allegations had been denied. It is stated that the petitioner gave a notice for construction of the building under Section 179 of the Cantonment Act 1924, on Plot No.21, in Sy.Nos.13 and 14, Laxminagar, Picket, Secunderabad Cantonment on 10-3-2006. The construction was not undertaken within the stipulated period. Subsequently, the petitioner again submitted a revised plan for construction of the residential building consisting of ground floor on 19-4-2006. The first plan for ground floor only was sanctioned under resolution No.2(8) dated 28-6-2006 and the plan was released under a covering letter dated 21-7-2006. The petitioner was permitted to construct the building subject to various conditions laid down by the Board in the letter dated 21-7-2006. Under a separate letter dated 21-7-2006, the petitioner was directed to pay the betterment/development charges and it was made clear that the plan will be released only after the required amount is deposited. The plan which was sanctioned was single storied building on Plot No.21 in Sy.Nos.13 and 14 and thereafter the petitioner submitted the revised plan for construction of four storied building on the same Plot No.21 in Sy.Nos.13

and 14, Laxminagar, Picket, Secunderabad without making the construction under the first plan. At the said stage, the verification of the records indicated that the society namely Akulanarayana Colony Society did not surrender 40% of the common area through gift deed as per layout bye law. A letter was therefore addressed to the petitioner to press for the transfer of 40% open area by way of gift deed by Society in whose favour the layout was sanctioned. As per resolution passed by the Board under resolution No.7, dated 28-10-2006 all building plans concerning the layouts where 40% of the land is not gifted are kept pending. It is further stated that the decision of the Board do have statutory force and it was decided unanimously that all plans submitted in respect of layouts where 40% common areas are not gifted shall be referred to competent authority but no decision is taken till date. The decision of the Board communicated under letter dated 20-2-2007 is within the four corners of layout bye law and building bye laws which have statutory force. The relief sought by the petitioner is extra-judicial in nature and the same is liable to be rejected. Further, it is stated that against the order of rejection of plan, the petitioner is entitled to prefer an appeal to the Director of Defence Estate, Southern Command, Pune and the same remedy of appeal under Cantonment Act 2006 is not exhausted.

The petitioner, without exhausting the statutory remedy is not entitled to invoke the jurisdiction of this Court for seeking the relief as prayed for and hence the Writ Petition be dismissed with costs. Strong reliance was placed on Sections 122, 250 and 340 of the Act referred to supra.

8. Here is a case where the writ petitioner approached this Court specifically averring that in relation to almost all the other plots, the owners had been granted permission long back and constructions also had come up. It is also pertinent to note that at a particular point of time, when an application had been made, the building permission in fact had been granted and this fresh condition which is being raised for the first time in pursuance of the resolution in the impugned order had been incorporated. For certain reasons, as explained by the writ petitioner, the petitioner could not further proceed with the construction and it appears another application had been made. The said application had been rejected specifying a fresh ground. In the light of the facts and circumstances, this Court is satisfied that the writ petitioner need not be driven to the alternative remedy of filing an Appeal especially in the peculiar facts and circumstances of the case since the self-same authority exercising the

power granted sanction at a particular point of time and the conditions specified in the said order, it appears, had been complied with, but the writ petitioner was unable to further proceed with construction. Subsequent thereto when an application again had been made, for reasons best known, the respondent is raising such an objection. Having granted permission to almost all other persons similarly placed within the vicinity, this Court is of the considered opinion that respondent is not justified in making such an order of rejection on such untenable ground. This action of the respondent is both arbitrary and also discriminatory, definitely hit by Article 14 of the Constitution of India. Hence, the impugned order is hereby set aside and the Writ Petition is hereby allowed. Let the respondent take appropriate decision in this regard in the light of the views expressed by this Court at the earliest, preferably within a period of two weeks from the date of receipt of a copy of this order. No costs.

_____

Justice P.S.Narayana

Date : 6-12-2007

L.R. copy to be marked : YES / No

AM